

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JAMES BENBOW,

Plaintiff,

-against- Civ. No.: 17-CV-6457 (EK) (LB)

CITY OF NEW YORK; POLICE OFFICER BRIAN W. FEELY;
POLICE OFFICER MATTHEW J. ROSIELLO; POLICE
OFFICER KENNETH L. ANDERSON; SERGEANT WILLIAM
A. DAIB; POLICE OFFICER SHANIEL J. MITCHELL;
and POLICE OFFICER STEPHEN J. MINUCCI,

Defendants.

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VIDEO CONFERENCE VIA ZOOM
Conducted by:
LEX REPORTING SERVICE
160 Broadway
New York, New York

October 27, 2020
10:02 a.m.

DEPOSITION of DETECTIVE MATTHEW J.

ROSIELLO, sued herein as **POLICE OFFICER MATTHEW J. ROSIELLO**, a Defendant in the above-entitled action, held remotely via Zoom videoconference, pursuant to Order, taken before Tania C. Pedrosa, a shorthand reporter and Notary Public within and for the State of New York.

LEX#159899



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FILE No.: 2017-066702

S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED
by and between the attorneys for the
respective parties herein, that filing,
sealing and certification be and the
same are hereby waived.

IT IS FURTHER STIPULATED AND AGREED
that all objections, except as to the
form of the question shall be reserved
to the time of the trial.

IT IS FURTHER STIPULATED AND AGREED
that the within deposition may be signed
and sworn to before any officer
authorized to administer an oath, with
the same force and effect as if signed
and sworn to before the Court.

THE REPORTER: This deposition is being conducted via Zoom videoconferencing. All parties present are appearing remotely and are confirming that they can hear and see through the video without any technical issues.

Would counsel and the witness please confirm.

MR. WEINER: Confirmed.

MR. ABOUSHI: Confirmed.

THE WITNESS: Confirmed.

THE REPORTER: Before I swear in the witness, I will ask counsel to stipulate on the record that due to the national emergency pandemic, the court reporter may swear in the deponent even though they are not in the physical presence of the deponent, and that there is no objection to that at this time, nor will there be an objection to

it at a future date.

MR. WEINER: Confirmed.

MR. ABOUSHI: Confirmed.

THE REPORTER: And, Counsel,
can you represent that to the
best of your knowledge and
belief, the witness appearing
today via videoconference is
indeed Police Officer Matthew J.
Rosiello?

THE WITNESS: That's me.

MR. WEINER: Yes.

M A T T H E W J. R O S I E L L O, the
witness herein via videoconference,
having first been duly sworn by a
Notary Public of the State of New York,
was examined and testified as follows:

EXAMINATION BY

MR. ABOUSHI:

Q State your name for the record,
please.

A Detective Matthew J. Rosiello.

Q State your address for the
record, please.

M. J. Rosiello

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A The other team?

Q Yeah.

A They were in -- they -- I think a gray Fusion that night.

Q Okay. And you drive over there with the other officers, correct?

A Correct.

Q And then what do you do?

A So basically from that point of when we got there, we basically just got -- you know, we -- we got set up in -- you know, we just tactically set ourselves up so that we basically had eyes of the -- you know, of that location where the male was.

Q Okay. And what happens next?

A All right. So once we were set up from that point, I think that's when the -- I believe it was the sergeant who was speaking to someone on the phone and they said that the male was leaving -- was actually leaving the club with another male at the time. They put over a clothing script that night. I don't recall the exact clothing script. The only thing that sticks

1 M. J. Rosiello 77

2 out in my mind is one of the males had a bag
3 in his hand.

4 Q Okay. And --

5 MR. WEINER: By "script," do
6 you mean description? Just so --

7 THE WITNESS: What was that?

8 MR. WEINER: Just so it's
9 clear, you said "script" but do
10 you mean description?

11 THE WITNESS: Yeah,
12 description, correct.

13 Q Was Sergeant Diab in the car with
14 you?

15 A No.

16 Q Okay. So this conversation that
17 you say happened, how do you know that
18 happened?

19 A We were over a tact division
20 channel at the time. It's basically a tact
21 channel. It's where -- you know, it -- it
22 enables us to communicate without the
23 frequency of having central on the radio. So
24 basically it's -- it's almost like when you
25 were a kid, like you had walkie-talkies.

M. J. Rosiello

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car with the -- with Mitchell and Minucci in it were basically going down the wrong way and they basically overshot them by about a car or two. And by the time they exited the vehicle, I guess the -- the males had realized who they were and they yelled, you know, "police," you know, "don't move" or whatever, "drop." And I think one of the -- one of the males had went right down to the ground.

Q Okay. And one of the males turned and ran away; is that correct?

A That's correct.

Q Okay. Is that -- where were you when that happened?

A So when that happened in correlation to where they were, I was probably about maybe three or four cars behind the other car when they did their initial stop.

Q Okay. So Sergeant Diab and Minucci and Mitchell make the initial stop, correct?

A Correct.

1 M. J. Rosiello 81

2 Q You, Feeley, and Anderson are
3 about three car lengths behind them --

4 A Yeah, maybe -- maybe a little bit
5 more, but, yeah, correct, the same thing.

6 Q Three or four lengths behind
7 them, correct?

8 A Okay.

9 Q Is that yes? It's a question.

10 A Yeah. That's what I'm saying.
11 I'm not -- I'm not going to say for sure it
12 was four cars, I mean, when it was five, you
13 know.

14 Q Yeah. I'm not saying it's
15 44.4 feet away.

16 A Yeah, yeah, I know.

17 Q You were three to four car
18 lengths away?

19 A Yeah.

20 Q Okay. And at some point do you
21 get out of your car?

22 A Yes.

23 Q Okay. Why do you get out of your
24 car?

25 A When I see the other -- the other

M. J. Rosiello

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Mr. Benbow, correct?

A Correct.

Q Okay. And then at some point, Mr. Benbow makes a right in between two cars towards the street, correct?

A Correct.

Q Okay. And at that point you thought Officer Anderson and Feeley were behind you; is that correct?

A From the point of us getting out of the car, that's correct.

Q Okay. All right. When you say "from the point of us getting out of the car," what do you mean by that?

A Okay. So when we pulled up, it was basically a passenger's side bail which is basically a passenger's side exit where -- in correlation to the sidewalk was to where we were. So by the time I got out of the car, I was the first one on the sidewalk knowing to me -- I thought Officer Anderson and Officer Feeley were both going to be behind me. Obviously, Officer Feeley was going to take a little bit longer because he

M. J. Rosiello

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was either going to have to go around the front of the car or the back of the car not realizing what's going on and seeing what's going on up ahead. That's, you know, the facts that I was dealing with.

Q Okay. So you got out of the car and you thought that Officer Feeley and Anderson would make their way behind you to also go on the sidewalk too, correct?

A Correct.

Q Okay. And at that point you see Mr. Benbow running down the street, cut in between two cars, and you shoot, correct?

A No.

Q Okay. At what -- okay. You're saying you didn't shoot?

A No. I'm saying that he didn't run in between the cars and then I shot.

Q Okay. So your testimony is you shot him before he ran in between the cars -- the parked cars?

A No. So -- I mean, if you want to break this down completely, we -- we could do it right now so --

1 M. J. Rosiello 85

2 Q Well, I just -- I just want to
3 understand at --

4 MR. WEINER: Let --

5 Q -- what point you shot him.
6 Did --

7 A That's -- that's what I'm saying.
8 That's what I'm saying. In correlation to
9 him running towards me -- as he's running
10 towards me and -- you know, obviously he
11 pulls a gun out of his waist and it comes
12 across, so, obviously, I'm -- I'm fearing for
13 myself at that point and then I yelled "gun"
14 and I hear Feeley over in the street. And at
15 that point, that's when he starts cutting in
16 between the cars. So as he's blading, I had
17 aimed for him and that -- that's basically
18 where I shot. So basically in correlation,
19 he was pretty much, like, right around the
20 front of the car when it happened.

21 Q In front of what car?

22 A In front of the car that he was
23 crossing in front of. Because he went from
24 the sidewalk and there was -- there was,
25 like, snow on the ground too and there was

1 M. J. Rosiello 86

2 cars parked in the street.

3 Q Okay. So he was blading --
4 essentially making a turn in between two
5 cars, correct?

6 A Yeah, for the most -- so, like,
7 when he -- when he was running at me -- I
8 mean, you got to remember. This all happened
9 in split seconds. He's running at me. And
10 as he's running at me, he's pulling a gun out
11 of his waistband. So by that time, I didn't
12 have my gun out at that point when he was
13 running at me. As soon as I saw the gun,
14 that's when I pulled my gun out.

15 Q Okay.

16 A I had --

17 MR. WEINER: Wait. Let
18 him --

19 Q Let me stop --

20 MR. WEINER: -- finish
21 his --

22 Q -- you there for a second.

23 MR. WEINER: Let him finish
24 his answer. He was not done.

25 Q Let me -- let me --

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MR. ABOUSHI: I like everything he has to say.

MR. WEINER: Okay.

Q When he was running at you, Detective Rosiello, did you shoot him?

A While he was running at me?

Q Yeah.

A While he was running at me, pulling his gun out of his waistband, yes, I did shoot him because his gun was pointed in my direction.

Q Okay. So as he's running down the sidewalk at you, your testimony is you shot him, correct?

A As he's running at me and his gun came across, yes, I did, fearing for myself and my partner's safety.

Q Okay. And so Officer Diab gets out of the car and -- and confronts these two individuals, correct -- just to back up a bit, correct?

A Correct.

Q Okay. Mr. Benbow turns around and runs down the sidewalk, correct?

1 M. J. Rosiello 89

2 A Correct.

3 Q And you said he took a gun out of
4 his waistband and he pointed it at you?

5 A So little to him knowing I was
6 even on the sidewalk, he had his head turned
7 focused on them so much and he was so zoned
8 that by the time he started pulling the gun
9 out and faced me and realized I was there,
10 his gun was sweeping right across me. And as
11 his gun was sweeping across me, I had pulled
12 my gun out. As soon as I saw his gun coming
13 out of his waistband, I pulled my gun out and
14 drew it on him. I alerted the other guys
15 that there was a gun and then I heard Feeley
16 yelling from the street. And as I had my gun
17 drawn on him, I see him cut in between the
18 two cars and at that point aiming for his
19 center mass, I hit him.

20 Q Okay. So you testified a moment
21 ago that you shot him because he pointed his
22 gun at you; is that correct?

23 A I testified to -- yes, that's
24 what I testified to.

25 Q Okay. And you testified that as

1 M. J. Rosiello 99

2 Q Detective Rosiello, I just need
3 you to focus on what I'm asking.

4 Did he or didn't he stop and
5 point a gun at you?

6 MR. WEINER: Objection.

7 A No.

8 Q You can answer.

9 Okay. Did he ever directly point
10 the gun at you?

11 MR. WEINER: Objection.

12 Objection.

13 Q You can answer.

14 A Not directly.

15 Q Okay. And so when you fired,
16 where was Sergeant Diab?

17 A Sergeant Diab I believe at the
18 time was still with the other male.

19 Q Okay. Where was Officer Minucci?

20 A I believe also with the other
21 male.

22 Q And where was Officer Mitchell?

23 A I believe all three of them were
24 -- were still over there.

25 Q Okay. And where is Officer

1 M. J. Rosiello 100

2 Anderson?

3 A Anderson at the time was behind
4 me.

5 Q Okay. And where was Officer
6 Feeley?

7 A In the street.

8 Q Okay. Where in the street?

9 A I don't know his exact location
10 where he was in the street but he was on the
11 other side of the car from where I was.

12 Q Okay. So you could see where he
13 was in terms of your -- the vehicle -- the
14 Crown Vic that you had got out of?

15 A It -- it was more of the fact of
16 -- of hearing where he was.

17 Q Okay. So you had no idea -- no
18 visual on him where he was, correct?

19 A Correct.

20 Q Okay. And so how many times did
21 you shoot?

22 A I shot one time.

23 Q Okay. Why would you shoot just
24 once as opposed to twice or three times or
25 four times?

1 M. J. Rosiello 138

2 Q Okay. But when he -- but when he
3 turned, was the gun physically pointed in
4 your direction?

5 A Yes.

6 Q Okay. And I want to ask about
7 when -- when you fired -- when you fired the
8 shots. Okay? Or the shot --

9 A Yes.

10 Q -- that you fired.

11 A Yes.

12 Q Did you fire -- did you fire at
13 Mr. Benbow -- is it fair to say that you
14 fired at Mr. Benbow while he was turning or
15 was it after he had turned or was it before
16 he turned?

17 A It -- it was -- it was almost
18 like mid-stride.

19 Q Okay. But was he -- where was --
20 you said that he had turned at some point.

21 MR. ABOUSHI: No. He didn't
22 say that. He said he shot him
23 before he turned. You're
24 mischaracterizing --

25 MR. WEINER: Well, I'm

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2 MR. WEINER: I'm asking --

3 MR. ABOUSHI: Like I said,
4 if you want to talk about it off
5 the record, I'm happy to do so.
6 I'm not going to get into a back
7 and forth with you about it,
8 particularly in the presence of
9 the witness.

10 MR. WEINER: I'm sorry that
11 I have a duty to clarify some of
12 the more confusing questions that
13 you answered and I'm doing --

14 MR. ABOUSHI: Okay. You
15 keep saying they're so confusing.
16 I don't think a judge would think
17 that they were so confusing.

18 MR. WEINER: Okay. I'm just
19 doing that right now.

20 BY MR. WEINER:

21 Q Let me just go back. You said
22 that part of the reason that you fired was to
23 protect your partner.

24 MR. ABOUSHI: Objection.

25 You can answer.

1 M. J. Rosiello 145

2 Q Correct?

3 A Yes.

4 Q Okay. And so which partner were
5 you trying to protect?

6 A Officer Feeley.

7 Q Okay. And you said that -- at
8 the moment that you shot the gun, where did
9 you believe Mr. Feeley was?

10 A Opposite --

11 MR. ABOUSHI: Objection.

12 A -- the car in between us.

13 Q Okay. So you believed -- what do
14 you mean by opposite of the car that was in
15 between you?

16 A So the car was dividing -- he's
17 on the other side of the car from where I
18 was.

19 Q Okay.

20 A He was basically in the street.

21 Q In the street. When you -- when
22 you shot did you -- were you able to see
23 Officer Feeley?

24 A At that time, no.

25 Q Okay. Why did you believe that

1 M. J. Rosiello 146

2 Officer Feeley was on the other side of the
3 car and in the street?

4 A I verbally heard him.

5 Q Okay. Do you remember what you
6 heard from him?

7 A I don't remember the exact
8 wording of what I heard from him.

9 Q Okay. All right. Did you
10 believe that Mr. Benbow had turned -- was
11 running in Mr. Feeley's direction --

12 MR. ABOUSHI: Objection.

13 Q -- when you fired your shot?

14 MR. ABOUSHI: Objection.

15 A Yes.

16 Q And why is it that Mr. Benbow
17 running in Officer Feeley's direction would
18 have posed a threat to Officer Feeley?

19 A Because he had a gun out.

20 Q I want to just ask a question
21 about when -- about timing. All right.

22 How long after you first saw the
23 gun did you shoot Mr. Benbow?

24 A Seconds.

25 Q Okay. And how long after you saw